IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

O R D E R

Surendra Singh Vs. State of Rajasthan

S.B.CRL. MISC. PETITION NO.710/2007

DATE OF ORDER :: August 09, 2007

PRESENT

HON'BLE MR.JUSTICE H.R.PANWAR

Mr.H.S.Shrimali, for the petitioner.
Mr.Vishal Raj Mehta, P.P. for the State.

BY THE COURT:

This criminal misc. petition under section 482 Cr.P.C. is directed against the order dt. 3.2.2007 passed by Additional Sessions Judge, Parbatsar (for short `the revisional court' hereinafter), whereby the revision petition filed by the petitioner against the order dt. 18.8.2006 passed by Additional Chief Judicial Magistrate, Parbatsar (for short `the trial court' hereinafter) was dismissed.

I have heard learned counsel for the parties. Carefully gone through the order impugned as also the challan papers.

It is contended by the learned counsel for the petitioner that on the report lodged by Madho Singh, Sub-Inspector, Police Station, Peelwa, a crime report was registered for the offence under section 3/7 of Essential Commodities Act (for short `the E.C. Act' hereinafter). The police investigated the matter and filed the negative final report. The trial court instead of accepting the negative final report, took the cognizance of the offence under section 3/7 of the E.C.Act and issued the process. The order of the trial court as also the revisional court is contrary to the evidence available on record as from the statements of the witnesses recorded by the police under section 161 Cr.P.C., prima facie there is no ground to proceed against the petitioner for the said offence.

Learned counsel for the petitioner has invited my attention to the statements of the witnesses recorded by the police under section 161 Cr.P.C. viz. Smt. Tijudi, Om Prakash, Mithu Ram, Prahlad Singh, Smt. Kanchan Devi, Smt. Jayanti, Smt. Jadav Devi, Smt. Janki, Chhitar Ram, Anandi Lal, Madan, Bhanwaroo Khan, Pokar Ram, Bhanwar Lal, Sohan Ram, Smt. Sayari, Banshi Ram etc. I have carefully gone through the statements of these witnesses. They categorically stated that the petitioner, who is running a fair price shop, used to sell wheat and kerosene oil on the rate prescribed by the Government but there had not been

any occasion for charging extra amount than the rate prescribed by the Government. Almost all the witnesses stated that the petitioner used to distribute the ration in time. They also stated that the fair price shop used to be opened regularly by the petitioner. From perusal of the statements of some of the witnesses, it also appears that one Govind Singh instigated the various persons by saying that the petitioner has been running a fair price shop for last ten years and, therefore, he be changed now for which a case has been instituted at his instance.

On careful scrutiny of the statements of the witnesses, in my view, the trial court fell in error in taking cognizance of the offence as from the statements of the aforesaid witnesses recorded by the police under section 161, prima facie no offence is made out. Almost all the witnesses have categorically stated that the petitioner used to open the fair price shop in time and distribute the commodities at the rate prescribed by the Government. It appears from the statements of the witnesses recorded by the police that witnesses have absolutely no grievance against the petitioner, who has been running the fair price shop. In the circumstances, therefore, in my view, the order impugned cannot be sustained and liable to be set aside and the order passed by the trial court taking cognizance as affirmed by the revisional court are deserve to be set aside.

Consequently, the petition is allowed. Order impugned dt. 18.8.2006 passed by the trial court as affirmed by the revisional court dt. 3.2.2007 are set aside.

[H.R.PANWAR],J.

m.asif/-